IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-5937

VENTURA E. YBARRA,

Appellant,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

ON APPEAL FROM THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT.

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE STATE OF MONTANA, AS AMICI CURIAE IN SUPPORT OF THE APPELLEE.

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This brief is filed pursuant to Rule 42 of the Supreme Court Rules. Consent to file has been granted by the Office of the State Appellate Defender, Ralph Ruebner, Esq., and Alan D. Goldberg, Esq., Counsel for the Appellant, and by Hon. William J. Scott, Attorney General, State of Illinois, Melbourne A. Noel, Jr., Esq., Counsel for the Appellee. Letters of consent of both parties have been filed with the Clerk of this Court. States are not required to obtain consent to file as *amici curiae*.

INTEREST OF THE AMICI CURIAE.

I. General Interest of the Amici Curiae.

Americans for Effective Law Enforcement, Inc. (AELE) is a national, not-for-profit citizens organization incorporated under the laws of the State of Illinois. As stated in its by-laws the purposes of the AELE are:

1. To explore and consider the needs and requirements for the effective enforcement of the criminal law.
2. To inform the public of these needs and requirements, to the end that the courts will administer justice based upon a due concern for the general welfare and security of law abiding citizens.
3. To assist the police, the prosecution, and the courts in promoting a more effective and fairer administration of the criminal laws.

In furtherance of these objectives AELE seeks to represent in our courts, nationwide, the concern of the average citizen with the problems of crime and police effectiveness to deal with crime.

The Illinois Association of Chiefs of Police, Inc., is a not-for-profit Illinois association and consists of over 600 members who are Illinois police chiefs and senior law enforcement executives. It, too, seeks to represent in our courts the concern of the average citizen with the problems of crime and police effectiveness in dealing with crime, with special emphasis upon the problems and concerns of police officers who face numerous legal and practical problems on a day-by-day basis in their effort to protect public safety.

The Attorney General of Montana is the chief law enforcement officer of his state with oversight for the fair and effective enforcement of the criminal law therein. Montana has a statute similar to the Illinois statute involved in this case.

II. Special Interest of the Amici Curiae.

Our particular interest in this case arises from the important constitutional and policy questions involved in the Illinois Statute (Illinois Revised Statutes, 1975, Chapter 38, Sec. 108-9) and the particular facts of this case. It is our belief that such a statute is absolutely essential to the protection of police officers from attack while executing duly issued search warrants, and in preventing the disposal or concealment of evidence described in such warrants and the discovery of other contraband, including weapons. It is our belief that when measured against the requirements of the Fourth Amendment, such a statute is reasonable on its face, and in its application, including to the facts of this case. The existence of such statutes encourages police officers to utilize the constitutionally preferred procedure of submitting their facts for a premises search to a magistrate for a search warrant, see *U. S.* v. *Ventresca,* 380 U. S. 102 (1965). We further believe that such statutes are highly desirable as reasonable and proper tools of law enforcement and that affirmance of the opinion of the court below will encourage the states to enact narrowly drawn and applied statutes that will serve the interests of law enforcement and protect the privacy and personal integrity of our law-abiding citizens.

ARGUMENT.

I.

Introduction.

Illinois Bureau of Investigation agents obtained a warrant for a search of a tavern in Kane County, Illinois known as the "Aurora Tap" for "evidence of the offense of possession of a controlled substance to be seized therefrom: heroin, contraband and other controlled substances, money, instrumentalities and narcotics, paraphernalia used in the manufacture processing and distribution of controlled substances." The Illinois Appellate

Court, Second District, in its opinion stated that ". . . in the complaint for the search warrant before us the allegation was made that the bar was frequented by persons illegally purchasing drugs," 373 N. E. 2d 1013, 1015, although the accuracy of this statement is disputed by the appellant in his brief. The premises were described by the Appellate Court as "dismal, drab and shabby," consisting of one room.

Only twelve patrons were present when the State agents, assisted by local police, arrived. In addition to a search of the premises, the patrons were searched. During the initial pat down of the appellant an officer felt a cigarette package with objects in it. A second search of his person turned up six tinfoil packs of heroin.

Probable cause for the search warrant is not an issue in this case. Appellant contends that the Illinois statute providing that a person executing a search warrant may search any person in the place at the time to prevent the disposal of articles or things described in the warrant is violative of the Fourth Amendment as applied to him. The statute is set forth as follows:

> *Illinois Revised Statutes,* 1975, Chapter 38, Sec. 108-9
>
> Detention and Search of Persons on Premises. In the execution of the warrant the person executing the same may reasonably detain to search any person in the place at the time:
>
> (a) To protect himself from attack,
>
> or
>
> (b) To prevent the disposal or concealment of any instruments, articles or things particularly described in the warrant.

The trial court denied appellant's motion to suppress, finding that the search in question was permissible under Section (b) of the statute. The Illinois Appellate Court affirmed this finding and the conviction, ruling that the statute, as applied to a search for articles or things described in the warrant, did not offend the Fourth Amendment. The Court made it clear that

such a warrant would not authorize a "blanket search" of persons or patrons found in "large" retail or commercial establishments.

> But in the case before us the search was conducted in a one room bar where it is obvious from the complaint of the officers seeking the search warrant that heroin was being sold or dispensed. 373 N. E. 2d 1013, 1018.

The opinion of the Appellate Court states that four other jurisdictions have similar statutes—Arizona, Kansas, Georgia and the District of Columbia—and the Court turned to several of the reported decisions of these jurisdictions, as well as Illinois, for construction of the statute and resolution of the constitutional issue.

A recent work by a distinguished authority on the Fourth Amendment notes that the courts of these states have upheld searches similar to that in the instant case on the basis of such statutes. La Fave, Search and Seizure, Vol. 2, p. 144 (1978). A 1973 Law Review Comment stated that eleven states at that time empowered the police, when executing a search warrant, to search all persons found on the premises described therein. Three such states granted this power through a specified form of warrant (Del., Mass., N. H.) while eight simply authorized the search without setting forth an "approved" form of warrant (Conn., Ga., Ill., Kan., Mont., Nev., N. Y., Wis.). Comment, 58 Cornell L. Rev. 614 (1973).

Thus, several jurisdictions have at various times sought to clarify police powers in searching persons present at the time and place of execution of a search warrant. The comments of the Illinois Revision Committee probably best summed up the common legislative intent running through these statutes when it stated:

> The Committee felt that this section is necessary because it gives the officer a clear outline of his power in executing the warrant and removes doubt from a rather cloudy area of the law. Revision Committee Comments to Ill. Ann. Stat. ch. 38, Sec. 108-9 at 271 (Smith-Hurd, 1970).

This attempt to clarify police powers in this area of Fourth Amendment rights, and to link it to the special protections surrounding a search warrant—as opposed to warrantless searches where no determination of probable cause for the initial search has been made by a magistrate—is submitted by *amici* to be a laudatory legislative activity that should be encouraged by the Supreme Court by a decision upholding the search in the instant case.

II.

The Appellant Was Not Entitled to Suppression of the Heroin Seized from His Person, as the Police Officers Would Have Been Fully Justified in Searching Him Under the Facts of This Case Even Without the Statute.

The record from the preliminary hearing and trial indicates that when the police arrived at the Aurora Tap they announced their purpose and advised the 12 patrons that they were going to make a cursory search for weapons. No patrons were allowed to leave and no one was permitted to enter while the search took place. Appellant was patted down by Agent Johnson who stated that he felt a cigarette pack with objects in it. A second search of appellant two or three minutes later resulted in the removal of six tin foil packets of heroin from his pocket. Agent Johnson described his search of the appellant as "more or less a pat down, cursory search for weapons for our protection."

Under the rule of *Terry* v. *Ohio*, 392 U. S. 1 (1968), the police may take appropriate self-protective action when performing their duty in potentially dangerous situations. While *Terry* involved a stop and frisk in a typical street encounter setting, its rationale is equally applicable to situations where the police are executing a search warrant, and it is submitted that its sweep should be significantly broader in the latter cases.

Under *Terry* the self-protective search is limited to a pat-down of the suspect's outer clothing and a seizure of only hard objects whose size and shape give the officer probable cause

to believe that the suspect is armed. Obviously a police officer executing a search warrant has placed himself in a unique zone of danger. Persons at the scene may be potentially dangerous, since they may be powerfully motivated to conceal evidence of a crime, assault or kill the officer to prevent arrest, or seek to escape. The analogy to *Terry* is appropriate and the pat-down authority is clear.

However, what if the pat-down does not indicate the existence of an object that could be a weapon, but indicates that it might be the type of evidence specified in the warrant? Are the police then powerless to act? This seems manifestly absurd. It would seem that if the police have come by their information through purely proper means (the pat-down for their self-protection), then they should not be required to ignore the presence of the very evidence specified in their warrant, as to which they have a *duty* laid upon them by the command of a magistrate to search for and recover such evidence. Ignoring such evidence and failing to seize it forthwith would be a violation of that duty.

This was the case in *State* v. *Yarbrough*, 26 Or. App. 481 (1976), where the police were executing a search warrant for balloons of heroin. In their pat-down of the defendant who was at the scene, it was concluded by the police that an object felt on his person was not a weapon but was apparently one of the items listed in the search warrant. They seized it and the search was ruled proper.

In the instant case the warrant was for "heroin, contraband and other controlled substances, money, instrumentalities and narcotics, paraphernalia used in the manufacture processing and distribution of controlled substances." Even members of the general public are by now familiar with the fact that such objects are frequently carried by criminals in cigarette packs, and certainly the police are aware of this. *U. S.* v. *Robinson*, 414 U. S. 218 (1973). When Agent Johnson conducted the pat-down of appellant, which he was entitled to do under *Terry*, and felt the cigarette pack, he had probable cause to believe

that appellant possessed evidence named in the warrant and was entitled to seize it.

It is submitted, however, that a more extensive patdown of suspects in search warrant execution cases should be allowed by this Court than would be permitted by *Terry* in the typical street encounter. The limited patdown of outer clothing permitted by *Terry* was tailored to the conditions of a one-on-one confrontation where the officer is focusing his attention upon one suspect. Under these conditions the suspect has relatively fewer opportunities to bring a weapon to bear against the officer. In a search warrant execution situation, however, the suspect will have more opportunities to reach into a pocket, purse, or bag while the police concentrate on moving about the premises to conduct the search. The primary focus of the police is the premises, not the persons on the premises. A search of premises is at best an arduous task calling for concentration free from distractions, and it allows the persons on the premises ready opportunities to do harm to the officers, unless such persons can be effectively neutralized.

It has been pointed out that it may be asked whether it is even necessary for the police to be able to point to specific and articulable facts tending to connect the person present at the scene of a search pursuant to a warrant with the criminal activity under investigation, or whether something less should suffice. LaFave, Search and Seizure, Vol. 2, p. 150 (1978). Perhaps it should be sufficient that the criminal activity that is the object of the search warrant is serious and that the person to be frisked is connected with the place where the criminal activity is taking place or evidence thereof is found pursuant to the warrant. As stated in *People* v. *Finn*, 73 Misc. 2d 266 (N. Y. 1973), it is "generally known by the police and others that those who traffic in large quantities of narcotics are often armed."

The mere presence of such persons should, as noted in *Finn*, be sufficient to give rise to sufficient and legal justification for the police to frisk all persons present for weapons, although *Finn*

involved the search of persons in an apartment, and *amici* do not argue for a rule broader than that which would be appropriate for the facts in the instant case, i.e., in relatively small premises, with a limited number of persons within the zone of danger to the police, and excluding large commercial or retail establishments.

Thus, it is submitted that a lesser showing that a person to be frisked "may be armed and presently dangerous" should suffice in these cases than would be required by *Terry* for a typical street confrontation. And when such a frisk reveals the presence of an object that the police reasonably believe may be an object specified in the search warrant, they should be permitted to complete their search and seize the object.

III.

A Statute Authorizing a Person Executing a Search Warrant to Search Any Person in the Place at the Time to Protect the Police from Attack or to Prevent the Disposal of Evidence Does Not Violate the Fourth Amendment on Its Face, or as Applied to the Facts of This Case.

As noted *supra*, Section (a) of the statute is no more than a codification of existing common law principles enunciated in *Terry* v. *Ohio*, 392 U. S. 1 (1968), and related cases, permitting the police to take appropriate self-protective action when executing a search warrant.

On the other hand, the legislative intent of the Illinois draftsmen with respect to Section (b) is best set forth in the Illinois Revision Committee comments:

> In addition it is clear that the purpose of the warrant would be thwarted were not the officer given the second power found in subsection (b), i.e. to search the person for the things to be seized. The need for this power arises most often in the narcotics cases where disposition is most easily effected. Ill. Ann. Stat. ch. 38, Sec. 108-9, Revision Committee Comments at 271 (Smith-Hurd, 1970).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-5981

FRANCIS RICK FERRI,

Petitioner,

v.

DANIEL ACKERMAN,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

REPLY BRIEF FOR THE PETITIONER

STATEMENT

Petitioner includes this supplemental statement in his reply brief in order to bring a subsequent factual development to the Court's attention as well as to correct a number of misimpressions engendered by Respondent's recitation of the facts.

[1] In his "traversal brief" filed in the Pennsylvania Court of Common Pleas, Ferri acknowledged the possibility of a collateral attack on his conviction on the ground of "ineffective representation of counsel" and declared his intention "to exercise that remedy" (A.32). Such an attack

has now been commenced. On September 7, 1979, a motion under 28 U.S.C. §2255 was filed by Petitioner in the United States District Court for the Western District of Pennsylvania (Civ. No. 79-1255). Respondent's brief suggests (i) that the grant of a §2255 motion "would moot any damage claims" available to Petitioner (Resp. brief at 5 n. 9; 47 n. 46) and (ii) that the mere availability of such a post-conviction procedure justifies the foreclosure of all state-created civil malpractice actions against federal court-appointed attorneys (Resp. brief at 44-49). There is no merit to either argument. *See* Point I, *infra.*

[2] Petitioner is currently serving a thirty-year prison sentence, the result of a twenty-year sentence for offenses under the Criminal Code (Title 18, United States Code) and a consecutive ten-year sentence for offenses under the Internal Revenue Code (Title 26, United States Code). On page 4 of Respondent's brief the twenty-year sentence is described as "not subject to question". Similarly, at a later point, Respondent argues that "Petitioner will not even begin to serve his disputed sentence until his twenty-year *undisputed* sentence has been completed" (Resp. brief at 47 n. 46) [emphasis added]. While the instant action - *Ferri v. Ackerman* - concededly concerns only the ten-year sentence, the Respondent's language conveys a serious misimpression. In a contemporaneously-filed malpractice action against prior counsel, Ferri directed his attack toward those counts leading to the twenty-year sentence. *See* Pet. brief at 5 n. 3. That action was dismissed by the Pennsylvania courts solely on the authority of *Ferri v. Ackerman,* ___ Pa ___, 394 A.2d 553 (1978). *See Ferri v. Rossetti,* ___ Pa ___, 396 A.2d 1193 (1979). The Petition for a Writ of Certiorari in *Rossetti,* 78-6153, was filed in February 1979 and is apparently being held in abeyance by

this Court pending the resolution of the instant action. To describe Ferri's malpractice claim as involving solely the ten-year portion of his sentence is, therefore, a fragmentary portrayal of the facts.

[3] This Court granted certiorari to decide whether a private attorney, appointed as defense counsel under the Criminal Justice Act (18 U.S.C. §3006A), enjoys an absolute federal common-law immunity from a common-law malpractice action *for his failure to raise a statute of limitations defense* on his client's behalf (Pet. brief at 3).

Notwithstanding the posture of this case both below and as presented in the certiorari petition, Respondent seeks to undermine the merits of petitioner's claim by implying that no such defense existed. On page 4 of his brief, Respondent quotes a narrow exception to the general three-year statute of limitations applicable to prosecutions under the internal revenue laws. *See* 26 U.S.C. §6531 (A six-year period is provided for the offense of "willfully attempting. . . to evade or defeat any tax. . ."). As this Court made clear, however, in its interpretation of §6531's predecessor, the six-year period "is an excepting clause and therefore to be narrowly construed." *United States v. Scharton,* 285 U.S. 518, 521-522 (1931). *See also Waters v. United States,* 328 F.2d 739 (10th Cir. 1964). The "willfully . . . evade or defeat" language of §6531(2), relied on by Respondent, has uniformily been held applicable only where willful evasion of taxes constitutes an essential ingredient under the statute defining the offense. *United States v. Heinze,* 361 F.Supp 46, 54 (D.Del. 1973). *See also United States v. Scharton, supra,* 285 U.S. at 522. The statute under which Ferri was charged, 26 U.S.C. §5861, contains no such ingredient. *See United States v. Freed,* 401 U.S. 601, 607-610 (1971).

REPLY

THE AVAILABILITY OF A SECTION 2255 MOTION TO COLLATERALLY ATTACK A FEDERAL CONVICTION ON THE GROUND OF INEFFECTIVE ASSISTANCE OF COUNSEL DOES NOT JUSTIFY THE FORECLOSURE OF STATE-CREATED CIVIL DAMAGE ACTIONS FOR MALPRACTICE.

Respondent, conceding the often inadequate nature of representation provided by appointed attorneys (Resp. brief at 52), seeks to convince this Court that the conviction-oriented remedy provided by 28 U.S.C. §2255 is both adequate and desirable as the exclusive source of relief for the ineffectively represented indigent.[1] There are innumerable flaws in this position.[2]

A. The Existence of Alternatives to a State-Created Damage Action is Not an Appropriate Concern of Federal Law.

As Petitioner's opening brief demonstrates, the question of whether a private attorney, appointed to represent an indigent defendant under the Criminal Justice Act, may be sued for common-law malpractice is not governed by principles of federal common law (Pet. brief at 16-31). For

[1]Respondent points also to the availability of judicial and professional discipline (Resp. brief at 50-53). Such remedies, however, do nothing to compensate the wronged party.

[2]All the arguments which follow apply with equal force to the habeas corpus remedy available where the §2255 procedure is shown to be "inadequate or ineffective".

the same reasons, the adequacy and desirability of alternative remedies to such a common-law suit are questions for the state court alone. Petitioner seeks a remedy afforded by the state to all its citizens. To permit a fedeal court to alter or modify this state substantive law as a matter of federal common law would set *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), on its head.[3] The cases cited by Respondent for the proposition that alternative remedies may prompt the grant of immunity (Resp. brief at 45, 49) are not to the contrary. In each of these the dispute concerned the reach of 42 U.S.C. §1983. It is hardly surprising that when a federally-created remedy has been sought, a federal court may construe Congressional intent or construct federal common law in light of the wronged individual's ability to obtain alternative redress. But this Court is not being asked to define the scope of a federal remedy. Nor is any manifest federal interest involved. *See* Pet. brief at 25-31. No more is at issue than a private individual's right to sue another private individual, *see* Pet. brief at 17-24, under state law.

B. The Conviction-Oriented Remedy Available Under Section 2255 Does Not Provide "Adequate Relief" for the Wronged Individual.

Quite apart from its disservice to the interests of federalism, Respondent's argument rests upon the un-

[3]The limitations of *Erie* bind this Court in its appellate consideration of common-law actions commenced in state court just as surely as they bind federal courts in their adjudication of diversity claims. *Cf. Murdock v. Memphis*, 87 U.S. (20 Wall.) 690 (1875) (If the Court assumes jurisdiction of a case because of a federal question decided in the state court it may not proceed further and consider separate questions of state law).

supportable proposition that the §2255 remedy is adequate to vindicate "defendants' rights to effective assistance of counsel" (Resp. brief at 45).

The sole relief proided under §2255 is the vacating or setting aside of the sentence. Its impact is solely prospective. It offers no redress for past periods of incarceration, lost income, destruction of reputation and expenditures for legal assistance incurred in pursuing post-conviction relief.[4] This inadequacy is made all the more significant by the frequently long period of time which may elapse between the time of the trial and the discovery of appointed counsel's errors.[5] In the usual circumstances the indigent will be incarcerated during the intervening months or years.

Respondent implicitly recognizes this deficiency in the conviction-oriented remedy[6] but finds it inapplicable to the instant case "[s]ince Petitioner has not yet begun to serve [the] contested sentence" (Resp. brief at 56). As noted in the "statement" segment of this reply, however, this presentation of the facts is misleadingly fragmented and reflects only the fortuitous circumstance that *Ferri v. Ackerman* preceded *Ferri v. Rossetti* in the Pennsylvania Supreme Court. In any event, Respondent's argument goes to the question of damages rather than to the issue of liability. Surely, no purer example of a state law question could be

[4]Appointment of counsel for §2255 proceedings rests with the discretion of the court or magistrate. *See* 18 U.S.C. §3006A(g).

[5]The instant case provides an illustration of this possibility. It was not until eighteen months after his conviction that Petitioner first became aware of the waiver of the statute of limitations defense by his counsel's failure to raise it during the course of trial (A.31 n.1).

[6]Of course, under Respondent's position, this deficiency would impact only on those without the financial ability to pay for an attorney. The remedy of a civil suit would remain for those with retained counsel.

found. *See* Point I A, *supra*.

Respondent's proffering of post-conviction collateral attack as an alternative remedy is flawed, however, by more than the inadequacy of the relief §2255 affords. Respondent mistakenly assumes that there is "no practical difference" between the criteria employed on post-conviction review where ineffective assistance of counsel has been alleged and the civil malpractice standard (Resp. brief at 45-46). Legal malpractice has been defined by statute or judicial decision in widely varying language by each of the fifty states. *See* Mallen & Levit, *Legal Malpractice* §§111-120 (1977). Similarly, no consensus has emerged among the eleven federal courts of appeals on the degree of inadequate representation that constitutes "ineffective assistance of counsel" in violation of the Sixth Amendment. *See Maryland v. Marzullo*, 435 U.S. 1011 (1978) (Opinion of Rehnquist, J., dissenting from the denial of certiorari); *Wainwright v. Sykes*, 433 U.S. 72, 105 n. 6 (1977) (Brennan, J., dissenting). *See also* Project, *Eighth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1977-1978*, 67 Geo. L.J. 317, 515-521 (1978). When the states are understandably diverse as to what constitutes civilly actionable malpractice and the federal courts cannot agree what level of competence satisfies the constitutional imperative, it is difficult to understand what Respondent is comparing when he portrays the standards as substantially identical.

C. The Conviction-Oriented Remedy Available Under Section 2255 is Not Effective in Ensuring a Better Quality of Representation for Indigent Defendants.

"Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty." *Bivens v. Six Unknown Federal Narcotics Agents,* 403 U.S. 388, 395 (1971). In spite of this common-law history, Respondent exhorts this Court to adopt a position which would leave the reversal of a defendant's conviction as the exclusive remedy for inadequate representation by appointed counsel.

The traditional approach of this Court in Fourth Amendment cases has been to permit conviction-oriented remedies only when the alternatives prove inadequate to protect the integrity of the judicial process and the rights of wronged individuals. *See Mapp v. Ohio,* 367 U.S. 643, 652-653 (1961). *See also California v. Minjares,* ____ U.S. ____, 48 U.S.L.W. 3116 (August 28, 1979) (Rehnquist J., dissenting from denial of stay). Respondent urges precisely the reverse stance when dealing with the Sixth Amendment. The rationale is not readily apparent. Maintenance of the right to effective counsel is not inherently best served by conviction-oriented remedies. To be sure, the price must be paid for years of inferior defense work on the part of appointed counsel. Oftentimes the reversal of convictions is deemed necessary to invigorate the constitutional right to counsel. But there are other choices. Respondent's approach addresses the symptoms at the expense of the disease. Sentences vacated on Sixth Amendment grounds provide no prophylactic fallout. The civil damage action, on the other hand, provides a much needed deterrent to the taking of

appointments by those without the requisite experience and those without the available time. The presence of such a deterrent can, in turn, be expected to upgrade the quality of appointed counsel's performance and decrease the number of convictions that must be vacated as a consequence of ineffective legal assistance.

This Court recently took notice of the "all too familiar" story of appointed counsel's indifference to his client's legitimate request for help and articulated its "strong interest in ensuring that lawyers appointed to aid indigents discharge their responsibilities fairly". *Wilkins v. United States,* ____ U.S. ____, 99 S.Ct. 1829, 1830 (1979). This interest is far more effectively forwarded by the deterrent of civil accountability than by the *ad hoc* undoing of convictions resulting from inadequate representation.

CONCLUSION

For the foregoing reasons, as well as those stated in Petitioner's opening brief, the judgment of the Pennsylvania Supreme Court should be reversed and the case remanded.

Respectfully submitted,

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